FILED
United States Court of Appeals
Tenth Circuit

March 19, 2013

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In re: ALVIN PARKER, Movant.	No. 13-6064 (D.C. No. 5:96-CV-00335-T) (W.D. Okla.)

ORDER

Before **HARTZ**, **EBEL**, and **HOLMES**, Circuit Judges.

Alvin Parker, an Oklahoma state prisoner proceeding pro se, seeks authorization to file a second or successive 28 U.S.C. § 2254 habeas petition challenging his 1990 conviction for second-degree murder. We deny authorization.

Parker's motion cannot proceed in the district court without first being authorized by this court. *See* 28 U.S.C. § 2244(b)(3). We may authorize a claim only if the prisoner has not raised it in a previous federal habeas petition. *See id.* § 2244(b)(1). We may not authorize a new claim unless it satisfies one or both of the requirements specified in § 2244(b)(2). A new claim must rely (1) "on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable," or (2) on facts that "could not have been discovered previously through the exercise of due diligence" and that "would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." *Id.* § 2244(b)(2)(A)-(B).

Parker asserts that his trial counsel provided ineffective assistance in failing to inform him of a pre-trial plea offer by the prosecutor. He claims that his prison sentence is four times longer than the sentence offered by the government in exchange for a guilty plea. Citing the Supreme Court's recent decisions in *Lafler v. Cooper*, ___ U.S. ___, 132 S. Ct. 1376 (2012), and *Missouri v. Frye*, ___ U.S. ___ 132 S. Ct. 1399 (2012), Parker contends that this claim relies on a "new rule of constitutional law" under § 2244(b)(2)(A).

Lafler and *Frye* held that the Sixth Amendment right to counsel may be violated when a defendant receives a harsher sentence as a result of his attorney's constitutionally deficient advice to reject a plea bargain, *see Lafler*, 132 S. Ct. at 1383, 1390-91, or as a result of his attorney's failure to inform him of a plea offer from the government, *see Frye*, 132 S. Ct. at 1404, 1410-11. But neither of these decisions announced a new rule of constitutional law. *See Williams v. United States*, 705 F.3d 293, 294 (8th Cir. 2013) (per curiam); *Buenrostro v. United States*, 697 F.3d 1137, 1140 (9th Cir. 2012); *In re King*, 697 F.3d 1189, 1189 (5th Cir. 2012) (per curiam); *Hare v. United States*, 688 F.3d 878, 881 (7th Cir. 2012); *In re Perez*, 682 F.3d 930, 933-34 (11th Cir. 2012) (per curiam).

Accordingly, the motion for authorization is denied. This denial of authorization "shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari." 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court

ELISABETH A. SHUMAKER, Clerk